

**IN THE UNITED STATES DISTRICT COURT FOR THE  
MIDDLE DISTRICT OF PENNSYLVANIA**

ROBERT D. KLINE,	)	
	)	
Plaintiff,	)	
	)	CASE NO.: _____
v.	)	
	)	
HEALTH AND LIFE ASSOCIATES, LLC,	)	
<i>et al.</i> ,	)	
	)	
Defendants.	)	

**NOTICE OF REMOVAL**

**COMES NOW** Defendant American General Life Insurance Company (“American General”), by and through its undersigned counsel, Jackson Kelly PLLC, and hereby removes this action from the Court of Common Pleas of Mifflin County, Pennsylvania to the United States District Court for the Middle District of Pennsylvania based upon Federal Question jurisdiction pursuant to 28 U.S.C. §§ 1331, 1441 and 1446. In support of removal, American General avers as follows:

1. On September 27, 2018, Plaintiff Robert D. Kline (“Plaintiff”) filed a Praecipe for Writ of Summons, a copy of which is attached hereto and marked as ***Exhibit A***.
2. On October 31, 2018, Plaintiff filed a Praecipe for Writ and Writ to Join Additional Defendants Pursuant to PA. R.C.P. Rule 2252, a copy of which is attached hereto and marked as ***Exhibit B***.
3. On December 11, 2020, American General filed a Praecipe and Rule to File Complaint, as well as Praecipe for Appearances for its undersigned counsel. A copy of these filings is attached hereto and marked as ***Exhibit C***.

4. That same day, the Prothonotary issued a Rule to File Complaint, a copy of which is attached hereto and marked as ***Exhibit D***.

5. On January 5, 2021, American General served the Rule to File Complaint upon Plaintiff, a copy of which is attached hereto and marked as ***Exhibit E***.

6. On February 3, 2021, American General served a Notice of Praecipe to Enter Judgment of Non Pros upon Plaintiff, a copy of which is attached hereto and marked as ***Exhibit F***.

7. On February 9, 2021, Plaintiff filed a Complaint in the Mifflin County Court of Common Pleas against the above-named defendants, including American General, a copy of which is attached hereto and marked as ***Exhibit G***.

8. In the Complaint, Plaintiff alleges causes of action against the named defendants based upon the federal Telephone Consumer Protection Act (“TCPA”), which is found at 47 U.S.C. § 227, *et seq.*, and one state law claim against the named defendants, Trespass to Chattels, which is based upon the same nucleus of operative facts as the TCPA claims.

9. Plaintiff has yet to properly serve the Complaint upon American General, but a copy of the Complaint was received by American General’s counsel on or about February 16, 2021. Accordingly, this Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b) because this Notice of Removal is being filed within thirty (30) days of receipt of a copy of the Complaint.<sup>1</sup>

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<sup>1</sup> Although Plaintiff filed his writ of summons against American General on October 31, 2018, and served it on American General on or about November 5, 2018, the Third Circuit “has determined that the 30-day period under § 1446(b)(1) begins to run only when a complaint, and not merely a writ of summons, has been filed.” *Spanier v. Freeh*, No. 4:14-cv-1316, 2014 WL 6687323, at \*3 (M.D. Pa. Nov. 26, 2014) (citing *Sikirica v. Nationwide Ins. Co.*, 416 F.3d 214, 223 (3d Cir. 2005)). That ruling “has been interpreted . . . to mean that removal is not proper until a complaint has been [received by] the defendants.” *In re Avandia Mktg., Sale Practices & Prod. Liab. Litig.*, 941 F.Supp.2d 568, 571 (E.D. Pa. 2013).

10. American General is currently unaware if the Complaint has been served on the other named defendants in this matter.

11. The state court wherein this action was originally filed is in Lewistown, Mifflin County, Pennsylvania, which is within the jurisdictional district of the United States District Court for the Middle District of Pennsylvania.

12. This Court has jurisdiction over this matter under 28 U.S.C. § 1331 because the present action arises under the TCPA, 47 U.S.C. § 227, *et seq.*

13. This Court has supplemental jurisdiction over the state law claim under 28 U.S.C. § 1367(a) because the state law claim is so related to the federal claim, forms part of the same case, and derives from the same nucleus of operative facts as the federal claim. *See Arnold v. Kimberly Quality Care Nursing Servs.*, 762 F.Supp. 1182, 1186 (M.D. Pa. 1991) (citing *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725 (1966)).

14. Removal is therefore proper under 28 U.S.C. § 1441(a) and (c)(A), which requires the removing defendant to establish that:

- (1) A civil action brought in a State court of which the District Courts of the United States have original jurisdiction, and
- (2) The claim arises under the Constitution, laws, or treaties of the United States, and
- (3) The United States District Court has supplemental jurisdiction over any related claims.

15. As required by 28 U.S.C. § 1441(a), true and correct copies of all process, pleadings and Orders served upon American General are being filed herewith.

16. Pursuant to 28 U.S.C. § 1441(d), American General is filing written notice of this Notice of Removal with the Court of Common Pleas of Mifflin County, Pennsylvania, simultaneously with the filing of this Notice of Removal, and will serve the same on Plaintiff and

the other named defendants. A copy of the Notice of Filing Notice of Removal, in the form in which it will be filed and served, is attached hereto and marked as ***Exhibit H***.

17. By this Notice of Removal, American General does not waive any objections it may have to service, jurisdiction or venue, or any other defenses or objections it may have to this action. American General intends no admission of fact, law, or liability by this Notice of Removal, and expressly reserves all defenses, motions and/or pleas.

**WHEREFORE**, Defendant American General Life Insurance Company respectfully requests that this Court assume jurisdiction over this matter on removal from the Court of Common Pleas of Mifflin County, Pennsylvania

Dated: March 5, 2021

Respectfully submitted,

/s/ Michael P. Leahey

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*Counsel for Plaintiff American General Life  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing “***NOTICE OF REMOVAL***” has been served upon the following parties via U.S. Mail this 5th day of March 2021:

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/s/ Michael P. Leahey  
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